

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Criminal Misc.No.29526-M of 2005

Date of Decision: November 30, 2007

Joginder Singh

...Petitioner

VERSUS

Manjeet Kaur

...Respondent

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.R.L.Batta, Senior Advocate with
Mr.Parveen Modgil, Advocate,
for the petitioner.

Mrs.Baljit Mann, Advocate,
for the respondent.

RANJIT SINGH, J.

This petition is pending since 2005. Prayer is for quashing of the complaint dated 22.5.2002, which is under Sections 420, 467, 468, 471, 406, 409, 420-B and 34 IPC. The dispute is on account of sale/sale agreements. The petitioner purchased 4 bighas 8 biswas of land being 1/5th share of the land measuring 22 kanals in the revenue estate of village Behra, Tehsil Derabassi (Rajpura), District Patiala.

Agreement to sell dated 17.1.1989 was made between Amrik Singh (husband of respondent Manjeet Kaur) for a sale consideration of Rs.15,000/-. A sum of Rs.3,000/- was paid as earnest money. The sale deed was to be executed on or by 30.1.1990. Amrik Singh, husband of the respondent, did not stand by the agreement and hence the petitioner filed a civil suit before Senior Civil Judge, Rajpura. The said suit, however, was dismissed on 3.5.2001, which was taken in appeal before District Judge. During the pendency of appeal, the parties statedly reached a compromise and registered sale deed dated 11.3.2002 is alleged to have been executed through the attorney of the husband of the respondent/complainant in favour of the petitioner. Respondent has now made representation that this power of attorney in favour of Mahinder Singh in fact had been cancelled on 20.3.2002 as attorney had dishonest intention. Grievance of the petitioner is that there is no communication to the attorney in this regard and even if it be so, the attorney had a valid right to act on the day he executed the sale deed. Claiming himself to be the bonafide purchaser of the property through a valid attorney, the petitioner pleads that no criminal liability can be fastened on to him and that respondent should have remedy against the attorney. Relying on this compromise only, the District Judge has also allowed the appeal filed by the petitioner and referred to above. The petitioner has been summoned on a complaint filed by the respondent, whereas the petitioner would say that his summoning is unjustified as the fact of allowing the appeal is not brought to the notice of the Judicial Magistrate, Rajpura, who has issued the summoning order. Taking this as a background, the prayer is made for quashing of the

summoning order and the complaint by the petitioner.

Reply on behalf of the respondent is filed. The plea taken is that Amrik Singh, husband of the respondent, was not owner of the property, which stands sold to the petitioner. It is further disclosed that this fact was admitted by Joginder Singh petitioner himself when he appeared as PW-1 in a suit for specific performance filed in the court of Addl.Civil Judge (Senior Division), Rajpura. It is thus pleaded that Mahinder Singh, attorney of Amrik Singh, would not have any right to sell the property of the petitioner. It is further disclosed that the compromise reached between the petitioner and the attorney of the husband of the respondent during the pendency of appeal would also be of no significance as Amrik Singh was not owner of the property and as such the same could not have been sold by attorney. The decision of the Appellate Court in this background, according to the counsel for the respondent, again is of no consequence. This factual position was earlier brought to the notice of the counsel representing the petitioner on 29.1.2007 when he had sought time to have instructions. Unfortunately, the counsel died during the pendency of the suit and petitioner is now represented by a senior counsel.

I have heard the counsel for the parties.

The complaint in this case has been filed by Manjeet Kaur, respondent. The whole case set up by the petitioner is that he had bought the property from the husband of the respondent through his attorney Mahinder Singh. The counsel appearing for the petitioner was not able to rebut the fact that Amrik Singh is not owner of the

property. If that be so, the attorney of Amrik Singh was not in any competent position to pass on any valid title to the petitioner. The compromise was also arrived at by the petitioner with the attorney of Amrik Singh and the same would be again of no consequence in the background, as afore-noticed. It will be for the trial Magistrate to see, on the basis of this evidence or other evidence that may be led by respective parties, if any criminal offence alleged against the petitioner is made out or not. There is real dispute in regard to sale, competency or validity of this sale through the attorney, who is stated to be not the owner of the property. All these disputed facts cannot be gone into while exercising jurisdiction under Section 482 Criminal Procedure Code. They are to be determined and decided by giving chance to the parties to prove their respective pleas.

No case for quashing the complaint, as such, is made out. The present petition is accordingly dismissed.

November 30, 2007
ramesh

(RANJIT SINGH)
JUDGE